

REMARKS

This is in response to the Office Action that was mailed on October 12, 2006. Claims 1-15 were in the application, of which claims 1-12, 14, and 15 were withdrawn from consideration. Claims 1-12 are cancelled, without prejudice. The Examiner is respectfully request to rejoin claims 14 and 15 with claim 13, it being noted that both of claims 14 and 15 is drawn to methods of using the microorganism of claim 13. The paragraph starting in line 10 on page 14 of the specification is divided into two paragraphs, and the first paragraph divided out therefrom is amended idiomatically to make it clear that Applicants have provided in the body of the specification a deposit identified by accession number, date of deposit, name and address of the depository, and complete taxonomic description (in this case, *Klebsiella pneumoniae* B-44). Formal amendments are made to claim 13. No new subject matter is introduced by this Amendment. Claims 13-15 remain pending in the application.

Claim 13 was rejected under the first and second paragraphs of 35 U.S.C. §112, due to its recitation of "*Klebsiella pneumoniae* B 44". That language has now been corrected to "*Klebsiella pneumoniae* B-44", thereby obviating this ground of rejection.

Claim 13 was rejected under 35 U.S.C. §101. The Examiner kindly suggested that this rejection could be overcome by inserting the language "a biologically pure culture" into claim 13. This change has been made, thereby obviating the rejection under 35 U.S.C. §101.

Claim 13 was rejected under the first paragraph of 35 U.S.C. §112. The Examiner argued that it is unclear if the starting materials were readily available to the public at the time of the

invention, citing 37 CFR 1.801-1.809. 37 CFR 1.809(b)(2) states that an "applicant for patent ... shall reply to a rejection under paragraph (a) of this section by ... arguing why a deposit ... actually made should be accepted". In the present case, the deposit actually made at the Institute for Fermentation, Osaka should be accepted because that is a depository affording permanence of the deposit and ready accessibility thereto by the public if a patent is granted. A copy of the Certificate of Deposit and its English translation are enclosed. The depository is identified by name and address in the paragraph beginning in line 10 on page 14 of the specification. The deposit has been given a specific accession number, specifically IFO 16579. Applicants have indicated, for instance in the paragraph beginning in line 10 on page 14 of the specification, that the deposited IFO strain (that is, IFO 16579) is available to any person. Applicants aver that the deposited *Klebsiella pneumoniae* B-44 will be furnished where the USPTO or a court requests by virtue of their office the furnishing of the microorganism in relation to this patent application or a patent granted thereon and where a person qualified to obtain the microorganism under U.S. patent laws and regulations requests the furnishing of the microorganism. Applicants aver that the deposited *Klebsiella pneumoniae* B-44 will be maintained at least for a period of 30 years after the date of deposit, and in addition will be maintained for a period of at least 5 years after the most recent request for the furnishing of a sample of the deposited microorganism. Accordingly, it is submitted that Applicants have satisfied the relevant requirements of the statute, thereby obviating this ground of rejection.

It is respectfully submitted that all outstanding rejections have been addressed and overcome, by amendment and/or argument. Accordingly, withdrawal of all rejections and passage of this application to Issue are earnestly solicited.

Application No. 10/652,252

Docket No.: 0042-0485P

If there are any questions concerning this application, please contact Applicants' representative Richard Gallagher at (703) 205-8008.

Respectfully submitted,

Dated: January 12, 2007

By  #42.874

A RG Marc S. Weiner

Registration No.: 32,181

BIRCH, STEWART, KOLASCH & BIRCH, LLP

8110 Gatehouse Road

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant

(書式4)

IFO番号(受託番号)通知書

2001年3月1日

東京都板橋区坂下 3-37-1  
有機合成薬品工業株式会社

高 重 伸 殿

〒532-8686

大阪市淀川区十三本町2丁目17番85号

財団法人 発酵研究所  
常務理事 竹内昌男



貴社からの特許寄託微生物を受け取り、下記のIFO番号で当研究所の保存株として受け  
入れましたので通知致します。

なお、万一に備え、念のため貴社におかれましても従来通り保存して頂きますようお願い  
致します。

記

1. 受入年月日 : 2001年3月1日

2. 微生物の受託番号及び名称 :

IFO 16579 *Klebsiella pneumoniae* B-44

## NOTIFICATION OF IFO NUMBER (DEPOSIT NUMBER)

March 1, 2001

Attention: Shigenobu Funazashi  
YUKI GOSEI KOGYO CO., LTD.,  
37-1, Sakashita 3-chome, Itabashi-ku, Tokyo

Masao Takeuchi, Managing Director  
Institute for Fermentation, Osaka  
2-17-85, Juso-honmachi, Yodogawa-ku, Osaka,  
532-8686

This is to notify that we have received your patent deposit  
microorganism, as a strain to be kept at our institute with the following  
IFO number.

For precautionary purposes, please continue to keep the  
microorganism.

REMARKS

- 1. Receipt Date: March 1, 2001

2. Deposit Number and Name of the Microorganism:  
IFO 16579 Klebsiella pneumoniae B-44